

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

KATRINA RYAN,

Plaintiff,

v.

HUDSON GARDEN APARTMENTS,
et al.,

Defendant.

No. 08-CV-373
(NAM/DRH)

**DAVID R. HOMER
U.S. MAGISTRATE JUDGE**

REPORT-RECOMMENDATION AND ORDER

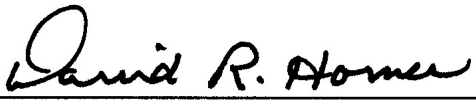
The complaint in the above-captioned case was filed in this district on April 7, 2008. Docket No. 1. Plaintiff was granted in forma pauperis status in an order filed April 15, 2008. Docket No. 4. Summonses were then issued on April 15, 2008 for service of process upon the two defendants by the United States Marshals Service. Docket No. 5. The summonses were returned to the Marshals Service unexecuted. Docket Nos. 7, 8. No further action has been taken to effect service upon either defendant.

Fed. R. Civ. P. 4(m) requires that a complaint be served upon a defendant within 120 days after the complaint is filed or the complaint may be dismissed as to any unserved defendant without prejudice. See also N.D.N.Y.L.R. 4.1(b). The complaint here was filed on April 7, 2008. More than 120 days have passed since either the complaint was filed or the summonses were issued and both defendants have yet to be served. Accordingly, it is hereby

RECOMMENDED that the complaint be dismissed without prejudice in accordance with Fed. R. Civ. P. 4(m) and N.D.N.Y.L.R. 4.1(b).

Pursuant to 28 U.S.C. § 636(b)(1), the parties have ten days within which to file written objections to the foregoing report. Such objections shall be filed with the Clerk of the Court. **FAILURE TO OBJECT TO THIS REPORT WITHIN TEN DAYS WILL PRECLUDE APPELLATE REVIEW.** Roldan v. Racette, 984 F.2d 85 (2d Cir. 1993) (citing Small v. Secretary of HHS, 892 F.2d 15 (2d Cir. 1989)); 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72, 6(a), 6(e).

DATED: October 17, 2008
Albany, New York



United States Magistrate Judge